

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BLANCA DeALBA, on behalf of herself
and all other employees similarly situated,
known and unknown,

Plaintiffs,

v.

COYOACAN, INC., an Illinois
corporation, and **PIEDAD CANALES**,
individually.

Defendants.

Judge Wayne R. Anderson

Magistrate Judge Susan E. Cox

No. 08 CV 4022

**MOTION TO DEEM SERVICE OF PROCESS
EFFECTIVE AS TO COYOACAN, INC., AND FOR
ENTRY OF DEFAULT ORDER AS TO COYOACAN, INC.**

The plaintiff prays that this Court will deem that service was properly effected upon the corporate defendant, COYOACAN, INC. The plaintiff also prays that this Court will enter an order of default against COYOACAN, INC., for failure to answer the complaint or otherwise defend. In support thereof, the plaintiff states as follows:

1. The individual defendant, PIEDAD CANALES, is listed in the Illinois Secretary of State's database as an officer and/or director of the defendant corporation, COYOACAN, INC., and is also listed as COYOACAN, INC.'s registered agent. A copy of the database entry is attached as **Exhibit A**.

2. On July 23, 2008, corporate service was effected upon the defendant, COYOACAN, INC., when special process server Steven A. Stosur (Lic. No. 117-001119) left a copy of the relevant summons and complaint with Francisco Canales, who is believed to be an officer, director, manager or other agent of COYOACAN, INC. The relevant return of service [Doc. 7] is attached as **Exhibit B**.

3. Accordingly, COYOACAN, INC.'s answer or other responsive pleading/motion was due on or before August 12, 2008.

4. To date, COYOACAN, INC., has not filed a responsive pleading or otherwise defended.

5. To date, COYOACAN, INC., has not filed its appearance.

6. While it is true that PIEDAD CANALES (the listed registered agent) was never personally served with process, she nonetheless filed her individual, *pro se* appearance on August 14, 2008. The appearance [Doc. 9] is attached as **Exhibit C**.

7. Subsequently, on August 19, 2008, PIEDAD CANALES also filed a document that she styled as her "Motion to Dismiss and Petition for Sanctions Pursuant to S.C.R. 11" [Doc. 10].

8. Given that PIEDAD CANALES is an officer and/or director (as well as the registered agent) of COYOACAN, INC., it would serve no purpose to require the plaintiff to personally serve her with process in her capacity as an officer or registered agent of COYOACAN, INC., when she has already appeared individually. To do so would elevate form over substance.

9. In any case, there is no indication that the corporate service upon COYOACAN, INC., by its agent, Francisco Canales (as evidenced by the return of service [Doc. 7] attached as **Exhibit B**), was defective in any way.

10. It is well settled that "a corporation may appear in the federal courts only through licensed counsel." *Rowland v. California Men's Colony*, 506 U.S. 194, 201-202 (1993) (citations omitted). Accordingly, the corporate defendant, COYOACAN, INC., is incapable of appearing or answering except by counsel.

11. Upon information and belief, PIEDAD CANALES is not an attorney, and is therefore incapable of representing the corporate defendant, COYOACAN, INC.

12. No attorney has yet appeared (or taken any action at all to the undersigned's knowledge) in this case on behalf of the corporate defendant, COYOACAN, INC.

13. FRCP 55(a) says that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default."

WHEREFORE, the plaintiff prays that this Court will:

- A. find that service was properly effected upon the corporate defendant, COYOACAN, INC., as of July 23, 2008, making its answer or other responsive pleading due by August 12, 2008;
- B. order COYOACAN, INC., to appear by counsel within 21 days of the hearing of this motion or be subject to a default order; and
- C. enter an order of default against COYOACAN, INC., if an answer or other responsive pleading/motion is not filed by counsel within the 21-day period indicated above.

Roy P. Amatore, Esq.
Paul Luka, Esq.
AMATORE & ASSOCIATES, P.C.
120 S. State Street • Suite 400
Chicago, IL 60603
312.236.9825 tel.

Respectfully submitted,

/s/Paul Luka
PAUL LUKA

Exhibit

A

4 of 8 DOCUMENTS

THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY

CERTIFICATION CAN ONLY BE OBTAINED THROUGH THE ISSUING GOVERNMENT AGENCY

ILLINOIS SECRETARY OF STATE

Company Name: COYOACAN INC.

Type: DOMESTIC CORPORATION

Status: GOOD STANDING (provided that (a) the franchise taxes/annual reports have been filed on a timely basis and (b) the entity has a valid registered agent. These items should be verified.)

Duration: PERPETUAL

Date of Incorporation/Qualification: 3/14/2008 (Anniversary Month: MARCH)

State or Country of Incorporation: ILLINOIS

Purpose: ALL INCLUSIVE PURPOSE

Registered Agent:

PIEDAD CANALES

Agent Appointed: 3/14/2008

Registered Office:

3826 W MONTROSE

CHICAGO, IL 60618

County: COOK

Additional Information: NOT REGULATED BY ILLINOIS COMMERCE COMMISSION

Corporation Number: 66021432

Annual Report:

Tax Factor: 1.000000

Stock Information:

Change in Stock: 3/14/2008

Change in Capital: 3/14/2008

Tax Capital: \$ 1

Total Capital: \$ 1

Type of Stock: COMMON

Shares Issued: 1,000.00

Authorized Quantity: 1,000

Voting Rights: YES

ILLINOIS SECRETARY OF STATE

Officers, Directors:
PIEDAD CANALES

Exhibit B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

BLANCA DEALBA, on behalf of herself and all other
employees similarly situated, known and unknown,

PLAINTIFF(S)

vs.

COYOACAN, INC AND PIEDAD CANALES

DEFENDANT(S)

COURT DATE:

Case No.
08 CV 4022

SERVICE DOCUMENTS:
SUMMONS & COMPLAINT

The undersigned, being first duly sworn, on oath deposes and says: That s(he) is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not party to nor interested in the above entitled action, and is competent to be a witness therein.

On Jul 23, 2008, at 10:00 PM, I served the above described documents upon COYOACAN, INC. as shown below

CORPORATE SERVICE was made by leaving a true and correct copy of the documents with FRANCISCO CANALES / MANAGER, an officer, managing agent or authorized agent of the within named company.

Said service was effected at 3826 W. MONTROSE, CHICAGO, IL 60618.

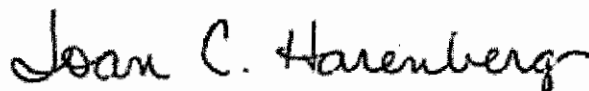
DESCRIPTION: Gender: M Race: HISPANIC Age: 30 Hgt: 5'6" Wgt: 195 Hair: BLACK Glasses: YES

I declare under penalties of perjury that the information contained herein is true and correct.



Steven A Stosur, Lic #: 117-001119
Judicial Attorney Services, Inc.
2100 Manchester Rd., Ste 900
Wheaton, IL 60187
(630) 221-9007

SUBSCRIBED AND SWORN to before me this 24th day of July, 2008



OFFICIAL SEAL
JOAN C HARENBERG
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES 07/13/09

NOTARY PUBLIC

CLIENT NAME:
Amatore & Associates, P.C.*

ORIGINAL PROOF OF SERVICE

TRACKING #
39866

FILE #:

Exhibit C

7

APPEARANCE FORM FOR PRO SE LITIGANTS
DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

FILED
J.N. AUG 14 2008
AUG 14 2008

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

Information entered on this form is required for any person filing a case in this court as a pro se party (that is, without an attorney).

NAME: Piedad Canales
(Please print)

STREET ADDRESS: 3826 W Montrose

CITY/STATE/ZIP: chicago IL 60618

PHONE NUMBER: 773 961 57 20

CASE NUMBER: 08CV4022

Piedad Canales
Signature

8. 12. 08
Date